

REMARKS

Reconsideration of this application is respectfully requested. Claims 32-48, 55, and 57-60 have been canceled. Claims 49-54 and 56 have been amended. New claims 61-67 are derived from claim 49 and are fully supported by the specification. The amendment adds no new matter. Upon amendment, claims 49-54, 56, and 61-67 are pending in this application.

REJECTIONS UNDER 35 USC § 102(b)

Claims 49, 50, and 52 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Baxby and Rondle, as evidenced by Antoine et al. The Examiner contends that Baxby and Rondle teach the titering of cowpox viruses on CEFs, and that this anticipates claims 49, 50, and 52 because cowpox virus contains homologues of the claimed host range genes.

Applicant has amended claim 49 to recite that the avian cell comprises an isolated Vaccinia virus host range gene or a homologue of said host range gene that is “not contained within a poxvirus genome.” Since the host range genes of Baxby and Rondle are contained within a poxvirus genome, Baxby and Rondle cannot anticipate claims 49, 50, and 52, as amended. Accordingly, Applicant respectfully requests withdrawal of the rejection.

REJECTIONS UNDER 35 USC § 103(a)

Claims 32-40, 45, 56, and 60 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tartaglia et al., Cochran and Junker, and Antione et al.

Claims 32-40, 45, and 60 have been canceled, and claim 56 has been amended to depend from claim 53. Accordingly, the rejection is moot.

Claims 48-50 and 52-54 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tartaglia et al., Cochran and Junker, and Antione et al. The Examiner contends that it would have been obvious to modify the avipoxviruses of Tartaglia to generate an avipoxvirus with a vaccinia virus host range gene inserted into the avipoxvirus genome, and that there would have been a reasonable expectation of success. Claims 51 and 55 were not included in the rejection by the Examiner, presumably because these claims recite that the host range gene is “integrated in the cellular genome” and “is not part of the genome of the Avipoxvirus,” respectively.

Applicant traverses the rejection. Tartaglia does not teach or suggest insertion of any of the claimed host range genes into an avipoxvirus. Neither does Cochran and Junker. None of the cited references suggests that any of the claimed host range genes would increase the expression of heterologous genes. Accordingly, the basis for the Examiner’s determination of obviousness is in error.

Moreover, Applicant has canceled claim 48 and amended claim 49 to recite that the avian cell comprises an isolated Vaccinia virus host range gene or a homologue of said host range gene that is “not contained within a poxvirus genome.” Since the host range genes of Tartaglia and Cochran and Junker are contained within a poxvirus genome, Tartaglia, Cochran and Junker, and Antoine cannot make obvious claims 49-50 and 52-54, as amended. Accordingly, Applicant respectfully requests withdrawal of the rejection.

REJECTIONS UNDER 35 USC § 112, SECOND PARAGRAPH

Claims 32-40, 45, 48-56, and 60 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. The Examiner contends that the recitation that “the host range gene is not part of the Vaccinia virus genome” is unclear.

Applicant has amended claim 49 to recite that the avian cell comprises an “isolated” Vaccinia virus host range gene or a homologue of said host range gene that is “not contained within a poxvirus genome.” This amendment clarifies that the virus is not present in the cell, but the genes are. Accordingly, Applicant respectfully requests withdrawal of the rejection.

The Examiner contends that the recitations of “having an increased viral titer compared to that of a corresponding avipoxvirus without said Vaccinia virus host range gene added to said viral genome” in claim 32 and “has an increased viral titer over that of a corresponding avipoxvirus without said Vaccinia virus host range gene added to said avipox viral genome” in claim 48 are indefinite because they refer to something that is variable and can’t be determined. Applicant traverses the rejection.

The titration of viruses is a routine technique in the art that can be performed to compare avipoxviruses with and without a host range gene. Of course, the skilled artisan would perform this comparison under similar culture conditions. Accordingly, Applicant respectfully submits that claims 32 and 48 are definite. Nevertheless, claims 32 and 48 have been canceled. Thus, this rejection is moot.

The Examiner contends that the recitation “wherein the host range gene is integrated in the cellular genome” in claim 51 is indefinite, because it is unclear how the

host range gene can be integrated and in the vaccinia virus of claim 48. Applicant has amended claim 50, from which claim 51 depends, to delete reference to claim 48.

Thus, this rejection is moot.

The Examiner contends that the recitation in claim 55 that the host range gene “is not part of the genome of the Avipoxvirus” is indefinite because it is unclear how the host range gene can be part of the avipoxvirus genome as recited in claim 48 and not part of it as recited in claim 55. Applicant has canceled claim 55. Thus, this rejection is moot.

The Examiner contends that the term “drug” is indefinite because it is used to mean “a recombinant avipoxvirus” in claim 40, while the accepted meaning is “a chemical substance that affects the processes of the mind or body. Any chemical compound used in the diagnosis, treatment, or prevention of disease or other abnormal condition.” Applicant traverses the rejection.

There is no reason that Applicant’s recombinant avipoxvirus cannot be a chemical substance that affects the processes of the mind or body. Similarly, there is no reason why Applicant’s recombinant avipoxvirus cannot be a chemical compound used in the diagnosis, treatment, or prevention of disease or other abnormal condition. Accordingly, Applicant respectfully submits that claim 40 is definite. Nevertheless, claim 40 has been canceled. Thus, this rejection is moot.

Applicant respectfully submits that this application is in condition for allowance. Should the Examiner disagree, he is invited to contact the undersigned to discuss any outstanding issues.

Respectfully submitted,

Law Office of Salvatore Arrigo

Dated: August 8, 2008

By: /Salvatore J. Arrigo/
Salvatore J. Arrigo
Registration No. 46,063
Telephone: 202.772.1101
Facsimile: 888.866.4907
E-mail: sal@arrigo.us